

### **REMARKS/ARGUMENTS**

Claims 1, 11, 21, 22 and 24 have been amended. Claims 1-5 and 7-32 remain in this application.

#### ***Claim Rejections***

##### **35 U.S.C. §102(b)**

The rejection of claims 1-5, 10 and 21 under 35 U.S.C. §102(b) as being anticipated by US Patent No. 6,319,253B1 to Ackeret et al. ("Ackeret") is respectfully traversed. Ackeret is concerned with allowing for use of spiral blades in a locking hole, and the locking hole is so configured. (col. 1, lines 50-52). Locking hole 1 (including slot 6) of the Ackeret embodiments is accordingly shaped to accommodate spiral blades. These Ackeret locking slots are therefore not symmetrical. (see, e.g., FIGA. 1a, 3b, 4a, 5a). Therefore, Ackeret does not disclose or suggest an intramedullary nail having a symmetrical aperture that has cylindrical portions and straight portions as called for in claim 1, and claim 1 and its dependent claims are patentable over Ackeret.

Claim 21 of the present application calls for securing a first fastener between the straight parts of the edge defining the aperture if dynamic fixation is chosen, and for the maximum outer diameter of the first fastener to be less than the distance between the straight parts of the edge. It is the Applicant's belief that Ackeret does not disclose a fastener that has a maximum outer diameter that is less than the distance between parts of the edge defining the slot 6. Accordingly, claim 21 and its dependent claims are patentable over Ackeret.

##### **35 U.S.C. §103**

The rejection of claims 8, 11-16, 18, 20, 22-27, 29, 31 and 32 under 35 USC §103(a) as being unpatentable over Ackeret in view of Sohngen (US Pub 2003/0195515A1) is respectfully traversed.

As discussed above with respect to claim 1, Ackeret does not disclose or suggest an intramedullary nail having a symmetrical aperture that has cylindrical portions and straight portions. Nor does Sohngen disclose such an intramedullary nail. Accordingly, claims 8 is patentable over Ackeret in view of Sohngen.

Independent claim 11 calls for the intramedullary nail to have an edge defining an aperture, the edge having spaced substantially parallel parts defining a first portion and a curved part defining a curved portion, the width of the curved portion being greater than the distance between the first and second substantially parallel parts of the edge, for the aperture to be symmetrical about a longitudinal axis extending from the second curved portion and between the substantially parallel parts and for the maximum outer diameter of the first fastener to be less than the distance between the substantially parallel parts of the edge. Ackeret does not disclose or suggest an intramedullary nail having a symmetrical aperture that has a curved portion and straight portions as claimed in claim 11. Nor does Sohngen disclose such an intramedullary nail. Accordingly, claims 11 and its dependent claims 12-16, 18 and 20 are patentable over Ackeret in view of Sohngen.

Independent claim 22 calls for an intramedullary nail to have an edge defining an aperture with an enlarged portion and a constricted portion connected to the enlarged portion, the enlarged portion having a diameter greater than the distance between the opposing parts of the edge defining the constricted portion, with the aperture being symmetrical about an axis through the enlarged portion and constricted portion. Ackeret and Sohngen do not disclose or suggest such an intramedullary nail. Accordingly, claim 22 and its dependent claims 23-27, 29 and 31 are patentable over Ackeret in view of Sohngen.

The rejection of claim 7 under 35 USC §103(a) as being unpatentable over Ackeret in view of Emilio et al. (US Pat. 5,814,047) is respectfully traversed. Ackeret and Emilio et al. do not disclose or suggest an intramedullary nail having a symmetrical aperture that has cylindrical portions and straight portions as called for in claim 1. Accordingly, claim 7, which depends from claim 1, is patentable over Ackeret in view of Emilio et al.

The rejection of claims 9, 17, 19, 28 and 30 under 35 USC §103(a) as being unpatentable over Ackeret in view of Sohngen in view of Emilio et al. (US Pat. 5,814,047) is respectfully traversed. Claim 9 depends upon claim 1, which, as discussed above, is patentable; accordingly, claim 9 is also patentable over these references. Claims 17 and 19 depend upon claim 11, which as discussed above, is patentable;

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accordingly, claims 17 and 19 are also patentable. Claims 28 and 30 depend upon claim 22, which is patentable; accordingly, claims 28 and 30 are also patentable.

**Conclusion**

For the above-described reasons it is respectfully submitted that the rejections to the claims have been overcome and that all remaining claims, namely claims 1-5 and 7-32 are currently in condition for allowance. A Notice of Allowance is respectfully requested.

Respectfully Submitted,  
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